

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

RALPH DALE ARMSTRONG,

Plaintiff,

v.

JOHN I. NORSETTER, MARION G. MORGAN,
and KAREN D. DAILY,

Defendants.

ORDER

12-cv-426-bbc

Defendant Marion Morgan has filed a renewed motion to stay this case pending an interlocutory appeal in which she is asserting a defense of qualified immunity. Dkt. #230. As requested by the court, Morgan has explained that the basis for her appeal is the tension between Armstrong v. Daily, 786 F.3d 529 (7th Cir. 2015), and cases such as McCarthy v. Pollard, 656 F.3d 478 (7th Cir. 2011), which provide different descriptions of the elements of claims like plaintiff's, thus creating uncertainty in the law.

On its face, defendant Morgan's argument does not appear to be frivolous, but I will give plaintiff (or any other party) an opportunity to show otherwise. Apostol v. Gallion, 870 F.2d 1335, 1337 (7th Cir. 1989) (case must be stayed pending appeal raising qualified immunity defense so long as appeal is not frivolous). Plaintiff and any other party who wishes to respond may have until August 3, 2016 to do so. In addition to addressing the question whether the claim against defendant Morgan should be stayed, the parties should

address the question whether the claims of the other parties should be stayed as well. Defendant Morgan may have until August 4, 2016, at 12:00 p.m. to file a reply. All deadlines, including the August 5, 2016 deadline for filing motions in limine, are STAYED pending resolution of defendant Morgan's motion.

Entered this 2d day of August, 2016.

BY THE COURT:

/s/

BARBARA B. CRABB

District Judge